WP(C) 1954/2000
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA
JUDGMENT AND ORDER (ORAL)

The petitioners, who are the scale-I officers of the respondent-Bank, are aggrieved by the procedure adopted towards effecting promotion to the next higher grade (Scale-II). Although the particular challenge made is in respect of Annexure-'D' and 'E' promotion orders, both dated 31.3.2000, but in effect, the petitioners have questioned the legality and validity of the promotion of their juniors to Scale-I grade, which according to them, is by way of adopting a wrong procedure. There is no dispute that the promotion from Scale-I to Scale-II grade is made on the basis of the 'seniority-cum-merit'. There is also no dispute that considering the inter-se seniority of the petitioners vis- -vis the private respondents, the petitioners are senior to some of the private respondents.

2. From the materials on record, what has transpired, is that the respondent-Bank considered the case of promotion of the Scale-I eligible officers of the Bank in the year 2000 and on the basis of the assessment made, the promotion orders were issued. Annexures-'D' and 'E' orders dated 31.3.2000 are two such promotion orders promoting the Respondents No.8 and 9 as Scale-II officers. It is the grievance of the petitioners that, but for the wrong procedure followed, their juniors could not have been promoted in supersession of their claim on the basis of their seniority and minimum merit.

3. It will be appropriate at this stage, to refer to the relevant rules governing promotion which is called the Regional Rural Bank (Appointment and Promotion of Officers and other employees) Rules,1988. This rule provides for filling up of Scale-II posts, both by direct recruitment as well as by promotion on the basis of 50 : 50 ratio. Rule 6 (e) of the Rules, laying down the criteria for promotion, provides that the promotion would be made on the basis of interview and assessment of performance reports for the preceding 3 year-periods . Rule 6 (a) of the Rules, dealing with the source of recruitment, provides that 50% of the promotional posts are to be filled up from amongst confirmed Field Supervisors on the principle of 'seniority-cum-merit'.

4. Annexure-'A' to the writ petition is the circular letter No.(ADMN)34/99 dated 3.9.1999 laying down the detailed procedure for consideration of the case of the Scale-I officers for promotion to the next higher grade. Marks have been allocated under different heads, which are - marks for service - 40; performance - 60 and interview - 40. Under the head - 'performance', various parameters have been laid down with distinct and separate marks against each one of the parameters. It will be pertinent to mention here that as per the requirement of the Rules, about which mention has been made above, the mode of selection for promotion is the interview and assessment of the performance report for the preceding 3 years.

5. Mr. R.P. Sarmah, learned Sr. counsel assisted by Mr. J. K. Parajuli, learned counsel for the petitioners submits that on the face of it, the procedure laid down and adopted by the respondent-Bank towards effecting promotion from Scale-I to Scale-II is contrary to the criterion of seniority-cum-merit. He submits that there being nothing adverse against the petitioner and they having not been declared unfit for promotion, the respondent-Bank could not have denied them promotion adopting a procedure, which is akin to the procedure for consideration of the case for promotion on the basis of merit-cum-seniority and/or merit-cum-suitability. He has placed reliance on the decision of the Apex Court as reported in (1998) 6 SCC 720 (B.V. Sivaiah and others v. K. Addanki Babu and others). It will be pertinent to mention here that this decision of the Apex Court also pertains to interpretation of the same set of rules namely, the Regional Rural Banks (Appointment ands Promotion of Officers and other Employees) Rules, 1988

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6. Countering the above argument, Mr. S. Dutta, learned counsel representing the respondent-Bank, who has also produced the records, submits that the criterion of seniority-cum-merit does not necessarily mean that by virtue of seniority alone, one can claim promotion, unmindful of minimum suitability and/or merit required for the promotional post. Placing reliance on the minutes of selection and the chart containing the marks secured by the officers under different heads, he submits that since the private respondents, some of whom are junior to the petitioners, excelled in performance appraisal, there is nothing wrong in promoting them to the next higher grade in supersession of the petitioners. He has also placed reliance on three decision of the Apex Court, which are - 1) 2002-II-LLJ-149 (Ved Prakash v. State of Haryana); 2) (1973) 2 SCC 836 (Union of India v. Mohan Lal Capoor and others) and 3) (1974) 4 SCC 308 (State of Mysore v. C.R. Sheshadri and others).

7. I have given my anxious consideration to the submissions made by the learned counsel for the parties and the materials available on records including the records produced by Mr. Dutta, learned counsel for the respondent-Bank. The aforesaid rules of 1988 have been framed in exercise of powers conferred by Section 29 of the Regional Rural Banks Act, 1976 read with Section 17 thereof. The relevant provisions of the Rules have been indicated above. Rule 6 (a) of the Rules provides that the promotion would be made on the principle of seniority-cum-merit. Rule 6 (c) of the Rules provides for interview and assessment of performance reports for the preceding 3 years periods for promotion. This principle came up for consideration before the Apex Court in the aforementioned case by B.V. Sivaiah. The Apex Court, upon discussion of the earlier judgments on the principle of seniority-cum-merit, summarized the sama as follows :-

18. We thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit

8. In the aforesaid case, the bank authority did not lay down the minimum marks for performance appraisal and interview for effecting promotion. In the case before the Apex Court, out of 150, the minimum cut-off mark was 85. It was held that those, who could secure this minimum 85 marks out of 150, irrespective of any junior securing more marks than the senior, the senior would become eligible for promotion on the basis of the seniority.

9. In the instant case, the records produced by Mr. Dutta, learned counsel for the respondent-Bank have revealed that while considering the case of the incumbents on the basis of the seniority, their performance appraisal was made applying the test of merit-cum-seniority and/or merit-cum-suitability. On perusal of the chart containing the marks secured by officers under different heads, what is seen is that the officers securing more marks have been selected for promotion and the promotion has been effected on that basis. For example, the petitioner No.1, who has secured 106 marks out of 150 has not been promoted. But on the other hand, his junior securing 107 has been promoted. It will be pertinent to mention here that in the gradation list, the seniority position of the petiioner No.1 is at Sl. No.41 as against Shri Banatosh Maitry at Sl. No.61. Shri Banatosh Maitry is the Respondent No.8.

10. It is not the case of the respondent-Bank that the minimum standard prescribed was 107 out of 150 for effecting promotion to the next higher grade. There is nothing on record to show that the petitioners are held to be unsuitable for promotion. Thus, without fixing the minimum standard, the respondent-Bank considered the case of the officers and on the basis of the marks secured, effected the promotion, as if, it was a case of merit-cum-seniority and/or merit-cum-suitability. It is true that the case of the officers was considered on the basis of the seniority maintaining the seniority positions. But while the question of consideration on the basis of the performance appraisal came on the way, the respondent-Bank adopted the criterion of merit-cum-seniority and/or merit-cum-suitability. This is how the petitioners have been eliminated from the race of promotion to the next higher grade.

11. The Apex Court in the case of Ved Prakash (supra) found fault with the finding of the High Court that the expression - 'seniority-cum-merit' will mean that the seniority alone should be the basis without considering the merit of the individual candidate. It was in that context the Apex Court considered the criterion of seniority-cum-merit emphasizing that the minimum merit and/or suitability will have to be adjudged. The same is not the case here. It is not the case of the petitioners that since they are senior, considering that aspect of the matter alone, they should be promoted. But their case is that the criterion and/or principle relating to merit-cum-seniority cannot be applied in place of seniority-cum-merit.

12. The next decision, on which Mr. Dutta, learned counsel for the respondent-Bank has placed reliance, is Mohan Lal Capoor (supra). That was a case relating to promotion of All India Service Officers on the basis of the IPS (Appointment by Promotion) Regulation, 1955. The rule itself provided that the selection for inclusion in the list shall be based on merit and suitability in all respects with due regard to seniority. Thus, the whole emphasis was on merit and suitability and it was on that context the Apex Court observed that the merit and suitability cannot be ignored in preference to seniority. Thus, this case is also of no help to the case of the respondent-Bank.

13. Mr. Dutta, learned counsel for the Bank has placed reliance on the decision of the Apex Court in C. R. Sheshadri (supra) to contend that even if it is found that the procedure adopted towards promotion of the private respondents is legally not sustainable and that the case of the petitioners is required to be considered afresh applying the true test of seniority-cum-merit, this Court will be reluctant to interfere with the promotion already effected in respect of the private respondents. According to him, even if the petitioners are entitled to get promotion, such promotion will be on the basis of the notional fixation of pay.

14. Once it is held that the respondent-Bank did not adopt the correct procedure towards consideration of the case of the officers applying the test of seniority-cum-merit, the natural consequence would be to consider the case of the petitioners afresh applying the true test of seniority-cum-merit, about which detailed discussions have been made in the above referred decision of the Apex Court i.e. B.V.Sivaiah (supra).

15. Although a prayer has been made for setting aside and quashing the promotion of the Respondents No.8 and 9 and for that matter, all other officers arrayed as party respondents, but I am of the considered opinion that ends of justice would be met if the respondent-Bank considers the case of the petitioners for their promotion with effect from the date when their juniors were promoted to the next higher grade. This shall be done applying the true test of seniority-cum-merit, about which discussions have been made above. The respondent-Bank will bear in mind that the Apex Court has already interpreted the same set of rules in the aforesaid decision of B.V. Sivaiah.

16. Upon consideration of the case of the petitioners on the above basis, if they are promoted to next higher rank of Scale-II officer, such promotion will be effective from the dates when their respective juniors were so promoted from Scale-I grade. However, since the petitioners have not shouldered the responsibility of higher post, upon their promotion to the said grade, they will be entitled to notional fixation of pay only with seniority and they will be entitled to get actual financial benefit from the date of shouldering the responsibility of the next higher post.

17. Entire exercise, which is now to be carried out by the Bank in terms of this judgment, will be so carried out as expeditiously as possible but at any rate, not later than 30th September, 2007.

18. Writ petition is allowed to the extent indicated above. There shall be no order as to costs.